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3 BILL NO. G-74-03- 34

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5 ORDINANCE NO. G-74- Wickerson

6 AN ORDINANCE PROHIBITING THE DISTRIBUTION  
7 OR EXHIBITION OF OBSCENE MATTERS OR  
8 PERFORMANCES.

9 BE IT ORDAINED by the Common Council of the City of Fort  
10 Wayne, Indiana:

11 SECTION 1. Obscene Matters and Performances.  
12 For purpose of this Ordinance:

13 (a) "Matter" means any book, magazine, newspaper, or printed  
14 or written material or any picture, drawing, photograph, motion  
15 picture, or other pictorial representation or any statue or  
16 other figure, or any recording, transcription, or mechanical  
17 chemical or electrical reproduction or any other articles, equip-  
18 ment, machines or materials.

19 (b) "Performance" means any play, motion picture, dance or  
20 other exhibition or presentation, whether pictured, animated  
21 or live, performed before an audience of one or more persons.

22 (c) Any matter or performance is obscene if: (i) the  
23 average person, applying contemporary community standards,  
24 finds that the matter or performance taken as a whole, appeals  
25 to the prurient interest, and (ii) the matter or performance  
26 depicts or describes in a patently offensive way, sexual conduct,  
27 normal or perverted, actual or simulated, and (III) the matter  
28 or performance, taken as a whole, lacks serious literary,  
29 artistic, political or scientific value.

30 (d) "Sexual conduct" means acts of masturbation, excretory  
31 functions, lewd exhibition of the genitals, sadomasochistic  
32 abuse, homosexuality, lesbianism, bestiality, sexual inter-  
33 course or physical contact with a person's clothed or unclothed  
34 genitals, pubic area, buttocks, or the breast or breasts of a  
35 female for the purpose of sexual stimulation, gratification,  
or perversion.

(e) "Sado-masochistic abuse" means flagellation or torture  
by or upon a person as an act of sexual stimulation or grati-  
fication.

(f) "Person" means any individual, partnership, firm, asso-  
ciation, corporation or other legal entity.

(g) "Distribute" means to transfer possession of, whether  
with or without consideration.

(h) "Knowingly" means knowing or having good reason to know  
or having such constructive knowledge ~~and~~ <sup>as</sup> would constitute know-  
ing, the character of the matter or performance.

(i) "Owner" means any person who owns or has legal right to  
possession of any matter.

(j) "City" means City of Fort Wayne, Indiana.

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3 SECTION 2. Every person who knowingly sends or causes  
4 to be sent, or brings or causes to be brought, into this City  
5 for sale or distribution, or in this City possesses, prepares,  
6 purblishes, or prints, with intent to distribute or to exhibit  
7 to another, or who offers to distribute, distributes, or  
8 exhibits to another any obscene matter is guilty of a misdemeanor.

9 SECTION 3. Every person who knowingly engages or parti-  
10 cipates in, manages, produces, sponsors, presents or exhibits  
11 any obscene performance is guilty of a misdemeanor.

12 SECTION 4. In any prosecution for a violation of this  
13 Ordinance, it shall be a defense that the act was done for  
14 legitimate scientific or educational purposes.

15 SECTION 5. Where the subject matter is offered for dis-  
16 tribution to the public as stock in trade of a lawful business  
17 or activity, or, as in the case of films, is exhibited at a  
18 commercial theater showing regularly scheduled performances  
19 to the general public, no person shall be arrested for a violation  
20 of any of the provisions of this Ordinance unless the arresting  
21 officer shall have first obtained an arrest warrant, and no  
22 property shall be seized as evidence unless a search warrant  
23 shall have first been obtained or unless the seizure occurs  
24 incident to the execution of an arrest warrant pursuant to the  
25 provisions of this Ordinance; Provided, however, that the  
26 quantity of matter seized shall encompass no more than is rea-  
27 sonable and necessary for the purpose of obtaining evidence.

28 SECTION 6. At any time after arrest and seizure, and  
29 prior to trial, the state, defendant, owner, or other party  
30 in interest of any matter seized, may apply for and obtain a  
31 prompt adversary hearing for the purpose of obtaining a prelimi-  
32 nary determination of obscenity. If the court determines at  
33 said hearing that the matter is obscene, the matter shall be  
34 held as evidence. In the case of films or motion pictures,  
35 at any time after arrest and prior to trial or any adversary  
36 hearing for the purpose of obtaining a preliminary determination  
37 of obscenity, the defendant or owner of any matter seized may  
38 apply for and, upon a showing that other copies of the film  
39 or motion picture are not available to be exhibited, the court  
40 shall order that the applicant be permitted to copy the film  
41 or motion pictures, at his own expense, so that showing can be  
42 continued pending a judicial determination of obscenity in an  
43 adversary hearing.

44 SECTION 7. Any person who violates any of the provisions  
45 of this chapter shall be guilty of a misdemeanor, and shall upon  
46 conviction, be fined in any amount not to exceed five hundred  
47 dollars (\$500.00) and, may be imprisoned for any period not to  
48 exceed six (6) months.

49 SECTION 8. If any provision or clause of this Ordinance,  
50 or its application to any person or circumstance is held invalid,  
51 the invalidity does not affect other provisions or applications,  
52 of this ordinance and to this end the provisions of each section  
53 are declared to be severable.

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3 SECTION 9. This Ordinance shall be in full force and  
4 effect from and after its passage, approval by the Mayor and  
5 legal publication thereof.

6 Samuel J. Talano  
7 Councilman  
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11 Approved as to legality and form  
12 this 25 day of March, 1974.

13 John H. Logan  
14 John H. Logan, Attorney for Common  
15 Council of the City of Fort Wayne, Indiana.  
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Read the first time in full and on motion by Fraus, seconded by V Schmidt, and duly adopted, read the second time by title and referred to the Committee on Committee of the Whole (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: 2-26-74

Charles W. Hesterman  
CITY CLERK

Read the third time in full and on motion by \_\_\_\_\_, seconded by \_\_\_\_\_, and duly adopted, placed on its passage. Passed (LOST) by the following vote:

	AYES _____	NAYS _____	ABSTAINED _____	ABSENT _____	to-wit:
BURNS	_____	_____	_____	_____	_____
HINGA	_____	_____	_____	_____	_____
KRAUS	_____	_____	_____	_____	_____
MOSES	_____	_____	_____	_____	_____
NUCKOLS	_____	_____	_____	_____	_____
SCHMIDT, D.	_____	_____	_____	_____	_____
SCHMIDT, V.	_____	_____	_____	_____	_____
STIER	_____	_____	_____	_____	_____
TALARICO	_____	_____	_____	_____	_____

DATE: \_\_\_\_\_

Charles W. Hesterman  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_.

ATTEST: (SEAL)

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

\_\_\_\_\_  
CITY CLERK

Approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at the hour of \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

\_\_\_\_\_  
MAYOR

Bill No. G-74-03-34

REPORT OF THE COMMITTEE ON COMMITTEE OF THE WHOLE

We, your Committee on Committee of the Whole to whom was referred an Ordinance

AN ORDINANCE PROHIBITING THE DISTRIBUTION OR EXHIBITION OF

OBSCENE MATTERS OR PERFORMANCES.

have had said Ordinance under consideration and beg leave to report back to the Common

Council that said Ordinance BE WITHDRAWN PASS.

Eugene Kraus, Jr.

James S. Stier

Vivian G. Schmidt

John Nuckols

DONALD J. Schmidt

William T. Hinga

Paul M. Burns

Winfield C. Moses, Jr.

Samuel J. Talarico

Eugene Kraus, Jr.

Vivian G. Schmidt

John Nuckols

William T. Hinga

Paul M. Burns

Samuel J. Talarico

CONCURRED IN

DATE 4-9-74 CHARLES W. WESTERMAN, CITY CLERK

DIGEST SHEET

TITLE OF ORDINANCE General Ordinance G-74-03-34

DEPARTMENT REQUESTING ORDINANCE Samuel J. Talarico - Councilman

SYNOPSIS OF ORDINANCE Prohibiting the distribution or exhibition of obscene matters  
or performances.

EFFECT OF PASSAGE Governing obscene matter of ordinance

EFFECT OF NON-PASSAGE Non-Governing obscene matter of ordinance

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) \_\_\_\_\_

ASSIGNED TO COMMITTEE (PRESIDENT) Regulatory Committee of the Whole